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January 9, 2004

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To: Assistant Commissioner for Patents
Washington, D.C. 20231

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Attention: Examiner EDWARD M. JOHNSON
Group Art Unit 1754
Phone Number: (703) 305-0216

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Re: OFFICIAL RESPONSE UNDER 37 CFR §1.111

The following is an OFFICIAL RESPONSE to an Office Action filed December 11, 2003,
in the below-identified U.S. Patent Application.

Application No. : 10/064,055
Applicant : Michael T. Hammer et al.
Filed: : June 5, 2002
TC/Art Unit: : 1754
Examiner : Edward M. Johnson

Confirmation No. 2116

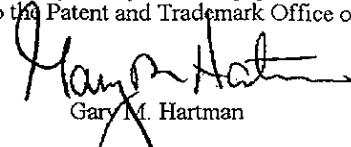
Docket No. : MET-1014

Submitted by:
Gary M. Hartman
Reg. No. 33,898

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CENTRAL FAX CENTER****JAN 09 2004****OFFICIAL****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. :	10/064,055	Confirmation No. 2116
Applicant :	Michael T. Hammer et al.	
Filed:	June 5, 2002	
TC/Art Unit:	1754	
Examiner :	Edward M. Johnson	
Docket No. :	MET-1014	
Customer No. :	27127	

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

In the Office Action of December 11, 2003, the Examiner required that Applicants make an election under 35 USC §121 between claims 1-14 (Group I) drawn to a process for removing NO_x, and claims 15-28 (Group II) drawn to a flue gas scrubbing apparatus. In response, Applicants provisionally elect with traverse to prosecute Group I, claims 1-14, on the merits. In doing so, Applicants respectfully traverse the restriction requirement and request reconsideration in view of the following comments.

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Docket No. MET-1014
Amendment dated January 9, 2004
Reply to Office Action of December 11, 2003

For the convenience of the Examiner, independent process claim 1 (of Group I) and independent apparatus claim 15 (Group II) are reproduced below.

1. A method of removing NOx gases from a flue gas, the method comprising the steps of:

contacting the flue gas with a scrubbing medium so that the scrubbing medium absorbs acidic gases from the flue gas to produce an acidic gas-containing solution and an intermediate flue gas;

reducing the temperature of the intermediate flue gas to convert nitric oxide to nitrogen dioxide;

absorbing the nitrogen dioxide from the intermediate flue gas to produce a nitrogen dioxide-containing solution and a scrubbed flue gas; and

reacting the nitrogen dioxide in the nitrogen dioxide-containing solution with ammonium hydroxide to produce ammonium nitrate.

15. A flue gas scrubbing apparatus for removing NOx gases from a flue gas, the flue gas scrubbing apparatus comprising:

means for contacting the flue gas with a scrubbing medium so that the scrubbing medium absorbs acidic gases from the flue gas to produce an acidic gas-containing solution and an intermediate flue gas;

means for reducing the temperature of the intermediate flue gas to convert nitric oxide to nitrogen dioxide;

means for absorbing the nitrogen dioxide from the intermediate flue gas to produce a nitrogen dioxide-containing solution and a scrubbed flue gas; and

means for reacting the nitrogen dioxide in the nitrogen dioxide-containing solution with ammonium hydroxide to produce ammonium nitrate.

The basis for requiring restriction between Groups I and II was that their subject matters are "related as process and apparatus for its practice." Under MPEP §806.05(e),

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inventions are deemed to be distinct if (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. The Examiner believes that Applicants' apparatus and process are distinct because the apparatus as claimed can be used to practice another and materially different process, citing "a process for SO_x, halogen, or HC removal or hydrotreatment of an organic feed," and because the process as claimed can be practiced by another materially different apparatus, citing "an apparatus comprising mean for multistage contact of a catalytic deNO_x material with support and binder."

Applicants respectfully disagree with the Examiner's conclusions.

(1) The first example cited by the Examiner does not recite a materially different process, because the Examiner has erroneously interpreted Applicant's independent apparatus claim 15 as not encompassing such processes as "SO_x, halogen, or HC removal or hydrotreatment of an organic feed," when in fact no limitation in claim 15 exists that would prevent the apparatus as claimed carrying out such processes, i.e., exclude the apparatus as claimed from having means for carrying out such processes.

(2) The second example cited by the Examiner does not recite a materially different apparatus, because the Examiner has erroneously interpreted Applicant's independent process claim 1 as not encompassing process steps performed by "means

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for multistage contact of a catalytic deNO_x material with support and binder," when in fact no limitation in claim 1 exists that would exclude such means from an apparatus used to carried out the process as claimed.

Therefore, Applicants respectfully believe that the Examiner has not shown that the claimed process and apparatus are distinct under MPEP §806.05(e).

Finally, the Examiner has not established that the search and examination of Applicants' entire application could not be made without serious burden. Therefore, Applicants believe that the present restriction requirement is not sanctioned by MPEP §803, which instructs that

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. (Emphasis added.)

To impose a restriction requirement simply because an application contains both process and apparatus claims serves only to double an Applicants' costs for obtaining patent protection for his/her invention while increasing the caseload of a patent examiner.

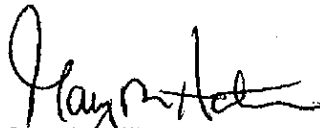
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Closing

In view of the above, Applicants respectfully request favorable reconsideration of the Restriction Requirement.

Should the Examiner have any questions with respect to any matter now of record, Applicants' representative may be reached at (219) 462-4999.

Respectfully submitted,

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January 9, 2004
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